TO: Tompkins County Municipal Courts Study Group

FROM: Glenn Galbreath

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RE: Next Steps

DATE: December 3, 2015

I am sorry that I will miss our next meeting (12/16/15, or will at least show up for it late. I leave tomorrow and will be out of town until the day of the meeting and am likely not to get in until after our meeting has begun. This meeting should be fairly important, because we are trying to begin to focus our inquiries. Therefore, it seemed to make sense that I should pass along my preliminary thoughts before I leave town. And these really are preliminary thoughts. I had to do them quickly and without the benefit of discussion with all of you. Half-baked as they might be, you have my permission to include them in the open record and put them on the website as well.

My first, and most strongly felt suggestion is that we actively discuss with and seek the agreement of the Tompkins County Magistrate's Association on the particular recommendations or findings of the committee. Because the Magistrate's Association is most directly and immediately impacted by our recommendations and findings, their involvement and cooperation will be critical to successful implementation. Without their support the likelihood of positive change is politically improbable. I recognize that there might be some limitations on the ability of the Magistrate's Association or even individual judges to bind themselves in advance on each of the issues below without possibly violating their judicial independence, but I think it is critical to ultimate success that we secure their support.

The following is an outline of some of my ideas on where we might focus. It is a very rough sorting of issues into those which I think are worth further consideration and those which are unlikely to survive. I also started to assign advantages (+) and disadvantages (-) to each. The issues are not placed in any particular order of priority.

ISSUES WORTH CONSIDERING FURTHER:

All courts should agree to take partial payments of fines, surcharge and restitution.

- ++ Much easier for defendants to pay
- It is more paperwork for court clerks

- + Fewer defendants will fail to pay
- + Ultimately less work for Court b/c defendant more likely to succeed
- + More money will be paid ultimately

All courts should provide liberal periods of time for low income defendants to pay fines, surcharges and restitution.

- ++ Much easier for defendants to pay
- It is more work for court clerks

- + Fewer defendants will fail to pay
- + Ultimately less work for Court b/c defendant more likely to succeed

If after giving low income defendants ample opportunities to pay fines, surcharges and restitution, they remain unable to pay, then all courts should use confessions of judgment to close out the case. In no instance, will a defendant be resentenced to jail when the defendant is unable (as opposed to being unwilling, but able, to pay).

++ Avoid jailing of indigents

- May never get paid
- + Some chance of ultimate recovery of \$
- Defendant may con the court
- + Avoid work of constantly summoning defendant -- Defendant may not change behavior

+++ This already is the law

For pretrial defendants, no court should require bail or remand defendants to jail without bail unless, statutes require no-bail or it is very clear that the defendant is unlikely to reappear.

+++ This already is the law

- Some defendants might not reappear

- ++ Save costs of jail/transport
- ++ Save defendant's/family job
- ++ Avoid major disruption of defendant/family
- + Even if not reappear, eventually will get caught

No court should require bail above the amount OAR can pay (after it reviews the defendant's situation in more depth) unless it is very clear that the defendant is unlikely to reappear even if an OAR level of bail is paid.

++ Save some of cost of jail

- Some defendants might not reappear

- ++ Save defendant's/family job
- ++ Avoid major disruption of defendant/family
- + Even if not reappear, eventually will get caught

All courts should agree that if the prosecution or defense requests transfer (see §170.15, CPL and §170.25 CPL) of a misdemeanor case by the County Court from a non-lawyer judge to a lawyer judge, the town/village court will agree to the transfer. The identity of the lawyer judge will not be known by the moving party in advance in order to limit "judge shopping."

- ++ Appearance + effect of a fair justice system Defendant judge shopping (?)

- + Less likely to make legal mistake
- + Tough to judge shop

All courts will do written decisions on motions/hearings that have any significant likelihood of appeal.

+ Appellate court is better able to rule - More work for judge ++ Writing forces clearer thinking - Delays decision

No court will have static "policies" that require sentence features that are imposed regardless of a defendant's circumstances (e.g. always imposing a maximum fine in seat belt violation cases), unless those features are mandated by law (e.g. statutorily defined minimum fines, surcharges, etc.)

++ Law already requires this - A little more work + Forces judge to consider each defendant as an

- Result less predictable

individual

All alcohol/drug related V+TL cases in the County should be sent to a specialized "DWI Court" in the County Court with a judge sitting as a local criminal court. I think this is already possible if the District Attorney simply instructed all police agencies to file all DWI cases there regardless of where in the county the offense occurred (see §100.55 7. CPL)

++ Complex, serious, + common cases need judge - Defendant must travel further

familiar with these cases and procedures

++ More uniformity of result

+ Easier to connect to drug courts and services

+ T/V courts get less work

+ Not require anyone but DA to agree

+ Can more easily systemized follow up

- T/V crts lose local control of case

- DWI Court gets a lot of work

Create a centralized arraignment location for all after-hours arraignments. It could be in the City of Ithaca or maybe even better next to the County Jail. Each judge and assigned counsel would be scheduled in advance to cover her/his share of this coverage.

++ Spread out the attorney/judge work load more evenly

+ No judge shopping

+ Less travel cost for most

+ Less time police are off the street

+ Quicker processing

- Need to arrange facility

- Cases from outlying areas, more travel

- Might need a statutory change

ISSUES WE PROBABLY SHOULD DROP:

Close all Village Courts and let the respective towns absorb the load.

- + Villages would save some money
- Town would have to absorb the cost
- -- No net savings
- -- Village loses all control
- GGG loses his job!

Remove one of the two justices in each town and have the remaining justice do all the work.

+ Might save a little money

- Remaining justice gets double workload
- No money saved if remaining justice
- demands other justice's salary
- Lose ready access to a back up justice
- Could limit flexibility in court scheduling

Require all town/village justices to be attorneys.

- ++ All things being equal, attorney judge is preferred
- + Less training required

- -- But things are never equal!
- Many lay-judges are better than attorney-judges
- Lose a large pool of qualified candidates
- Attorneys already have an advantage in being elected over a non-lawyer
- Some areas have no well qualified
- attorney judges
- Requires change of NY Constitution
- Attorney judges have higher proportion of
- ethical problems
- --- Politically this issue is toxic

Abolish town/village courts and replace with a District Court to cover everything that town and village courts cover now.

- ++ Simpler
- + Probably more uniform
- + More attractive to finding attorney-judges
- ++ State would pay for it (initially)

- --- Much more expensive than T/V courts
- --- Lose local control
- Farther for defendants to travel
- More bureaucratic
- -- State control
- May not work, e.g. who would do after hour arraignments?
- Party politics will intervene because judge positions seen as attractive political plums
- --- Politically this issue is even more toxic

Create a district court for misdemeanors and let the town and village courts deal only with infractions and small claims.

- + Allows attorney judges do more complex cases
- + State pays for some of this

- -- Costs are even higher
- Not simple at all
- Farther for defendants to travel
- Bureaucratic
- -- State control
- -- Politically this issue is toxic